HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

Writ Petition No. 29651 of 1997

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Between:

District Manager,
Food Corporation of India,
Vijayawada. …Petitioner

And

Smt. Shaik Haleema Bee & others. ….Respondents.

:: O R D E R ::

Counsel for the petitioner : Sri Mehar Chand Noori

Counsel for the respondents : Sri V.S. Sai Kumar

4th April, 2007

This petition is directed against order dated 13-6-1997 passed by the Presiding Officer of Labour Court, Guntur (hereinafter referred to as 'the Labour Court'), whereby he allowed the application filed by respondent Nos.1 to 12 under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') and directed the petitioner to pay them Rs.1200/- per month for the period from 10-12-1976 to 10-4-1990 and also give them bonus and benefit of encashment of Earned Leave.

Respondent Nos.1 to 12, who were working as sweepers with the contractor engaged by the Food Corporation of India (for short, 'the corporation') for handling, loading and unloading of food grains at its Tadepalli Depot jointly filed an application under Section 33-C(2) of the Act for issue of a direction to the petitioner to pay them difference of salary at the rate of Rs.1200/- per month by asserting that in view of Notification dated 9-12-1976 issued by the Central Government under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, 'the 1970 Act'), they have become employees of the Corporation. They pleaded that the corporation cannot discriminate them in the matter of payment of salary only on the ground that they were initially employed under the contractor.

In the counter filed on behalf of the petitioner, it was averred that respondent Nos.1 to 12 were not the employees of the Corporation and that they were engaged by the contractor, who was awarded the contract of handling, loading and unloading of food grains. It was further averred that the work of handling, loading, unloading and transporting the food grains is periodical in nature and is not perennial or continuous and that the contractor used to engage workers for fixed periods as per the job requirement.

The learned Presiding Officer of the Labour Court referred to the pleadings and evidence of the parties, the judgment of the Supreme Court in **Air India Statutory Corporation v. United Labour Union**[1] and held that even though the applicants (respondent Nos.1 to 12 herein) were initially employed by the contractor, by virtue of Notification dated

9-12-1976 issued under Section 10 (1) of the 1970 Act, they will be deemed to have become employees of the corporation and, as such, they are entitled to be paid salary at par with regular sweepers. Accordingly, he allowed the application filed by respondent Nos.1 to 12 and directed the petitioner to pay Rs.1200/- per month to each one of them for the period specified in order dated 13-6-1997.

Sri Meher Chand Noori relied on the judgments of the Supreme Court in **Steel Authority of India Ltd. v. National Union Waterfront Workmen**[2] and **A.P. S.R.T.C. v. G. Srinivas Reddy**[3] and argued that the impugned order is liable to be set aside because it is essentially based on the judgment of the Supreme Court in **Air India Statutory Corporation v. United Labour Union** (supra), which has been overruled by the Constitution Bench. He then argued that respondent Nos.1 to 12 cannot be treated as employees of the Corporation because they were engaged by the private contractor for fixed periods with intermittent breaks. He further argued that while deciding the application filed under Section 33-C(2), the Labour Court cannot adjudicate substantive rights of the parties and, therefore, the impugned order is liable to be declared without jurisdiction. In support of this argument,

Sri Meher Chand relied on the judgments of the Supreme Court in **State Bank of India v. Ram Chandra Dubey**[4] and **U.P.SRTC v. Birendra Bhandari**[5]. Lastly, Sri Meher Chand argued that the doctrine of equal pay for equal work cannot be enforced by means of an application filed under Section 33-C(2).

Sri V.S. Sai Kumar, learned counsel for respondent Nos.1 to 12 fairly conceded that the judgment of the Supreme Court in **Air India Statutory Corporation v. United Labour Union** (supra) has been overruled by the Constitution Bench in **Steel Authority of India Ltd. v. National Union Waterfront Workmen** (supra), but argued that the direction given by the Labour Court may not be disturbed because by having worked under the Corporation for a period of almost 20 years, his clients have become entitled to receive salary at par with regular employees.

I have given serious thought to the respective arguments. Section 33-C(2), which has bearing on the decision of this petition reads as under:

> "**33-C(2)**. Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months;
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> Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

An analysis of the above reproduced provision shows that the power vested in the Labour Court is akin to that of an executing court. A workman can approach the Labour Court for grant of any money payable to him or any benefit which is capable of being computed in terms of money. The Labour Court can direct payment of the monetary benefit, which the workman is entitled to receive from the employer and also any benefit which is capable of being computed in terms of money. In that process, the Labour Court can decide the question relating to the amount of money due or the amount at which the particular benefit should be computed. However, while deciding an application filed by the workman under Section 33-C(2), the Labour Court cannot adjudicate on his substantive rights or status.

In **Central Bank of India v. P.S. Rajagopalan**[6], the Supreme Court considered the maintainability of proceedings under Section 33-C(2) of the Act in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the one that Section 33-C(2) could not be invoked for adjudication of substantive rights. It was urged that the claim of the workmen fell outside the purview of Section 33-C(2) because the same required interpretation of the Sastry Award. The Supreme Court negatived the objections raised on behalf of the employer and held that in exercise of the power vested in it under Section 33-C(2), the Labour Court is competent to interpret the award or settlement on which the workman bases his claim. The relevant extracts of the judgment are reproduced below:

> "Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under Section 33-C(2). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under Section 33-C(2), it would, in appropriate cases, be open to the Labour Court to interpret the award or settlement on which the workman's right rests."

In **Bombay Gas Co. Ltd. v. Gopal Bhiva**[7], the Supreme Court held that the proceedings contemplated by Section 33-C(2) are analogous to execution proceedings and the Labour Court, like the Executing Court, in the execution proceedings governed by the Code of Civil Procedure, would be competent to interpret the award on which the claim is based.

In **Chief Mining Engineer, East India Coal Co. Ltd. v. Rameswar**[8], the Supreme Court held that the right to the benefit which is sought to be computed under Section 33-C(2) must be an existing one, that is to say, already adjudicated upon or provided for. Some of the propositions of law laid down in that decision are as under:

> "(1) The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing individual rights and therefore inserted Section 33-A in 1950 and Section 33-C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case.
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> (3) Section 33-C which is in terms similar to those in Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950 is a provision in the nature of an executing provision.
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> (5) Section 33-C(2) takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money even though the right to the benefit on which their claim is based is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workmen's right rests.
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> (7) Though the court did not indicate which cases other than those under sub-section (1) would fall under sub-section (2), it pointed out illustrative cases which would not fall under sub-section (2), viz., cases which would appropriately be adjudicated under Section 10(1) or claims which have already been the subject-matter of settlement to which Sections 18 and 19 would apply.
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> (8) Since proceedings under Section 33-C(2) are analogous to execution proceedings and the Labour Court called upon to compute in terms of money the benefit claimed by a workman is in such cases in the position of an Executing Court, the Labour Court like the Executing Court in execution proceedings governed by the Code of Civil Procedure, is competent under Section 33-C(2) to interpret the award or settlement where the benefit is claimed under such award or settlement and it would be open to it to consider the plea of nullity where the award is made without jurisdiction."

In **Central Inland Water Transport Corporation Ltd. v. Workmen**[9], the Supreme Court reiterated that the proceedings under Section 33-C(2) are in the nature of execution proceedings and held that an investigation of the alleged right of re-employment is outside the scope of that section and that while exercising power under Section 33-C(2), the Labour Court cannot arrogate to itself the functions of adjudication of the dispute relating to the claim of re-employment. The proposition of law laid down in that case reads as under:

> "In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No.(iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding under Section 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope. It is true that in a proceeding under Section 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely 'Incidental'. To call determinations (i) and (ii) 'Incidental' to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court under Section 33-C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions—say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation. In such cases, determinations (i) and (ii) are not 'Incidental' to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which

commenced with a reference to the Industrial Tribunal. It was, therefore, held in **State Bank of Bikaner and Jaipur v. R.L. Khandelwal** that a workman cannot put forward a claim in an application under Section 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject- matter of an industrial dispute which requires a reference under Section 10 of the Act."

In **Municipal Corporation of Delhi v. Ganesh Razak**[10], the Supreme Court ruled that claim based on the principle of equal work for equal work cannot be enforced in an application filed under Section 33-C(2). Paragraph 13 of that judgment reads as under:

> "In these matters, the claim of the respondent-workmen who were all daily-rated/casual workers, to be paid wages at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer without which the stage for computation of that benefit could not reach. The workmen's claim of doing the same kind of work and their entitlement to be paid wages at the same rate as the regular workmen on the principle of "equal pay for equal work" being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33-C(2). The mere fact that some other workmen are alleged to have made a similar claim by filing writ petitions under Article 32 of the Constitution is indicative of the need for adjudication of the claim of entitlement to the benefit before computation of such a benefit could be sought. Respondents' claim is not based on a prior adjudication made in the writ petitions filed by some other workmen upholding a similar claim which could be relied on as an adjudication enuring to the benefit of these respondents as well. The writ petitions by some other workmen to which some reference was casually made, particulars of which are not available in these matters, have, therefore, no relevance for the present purpose. It must, therefore, be held that the Labour Court as well as the High Court were in error in treating as maintainable the applications made under Section 33-C(2) of the Act by these respondents."

In **State Bank of India v. Ram Chandra Dubey** (supra), the Supreme Court highlighted the distinction between a pre-existing right or benefit and the right or benefit which is required to be determined by an adjudicatory forum in the following words:

> "Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

The above noted proposition has been reiterated in **U.P. SRTC v. Birendra Bhandi** (supra).

Adverting to the facts of this case, I find that the claim of respondent Nos.1 to 12 to be paid difference of salary was founded on the adjudication of their right to be treated as employees of the Corporation. The Labour Court extensively referred to the provisions of the 1970 Act, the judgment of the Supreme Court in **Air India Statutory Corporation v. United Labour Union** (supra) and held that the applicants will be deemed to have become employees of the Corporation and, as such, they are entitled to difference of Rs.1200/- per month. It is, thus, evident that while deciding the application filed by respondent Nos.1 to 12 under Section 33-C(2) of the Act, the Labour Court did not direct payment of monetary benefits, which respondent Nos.1 to 12 were entitled to receive from the corporation as of right, but made an adjudication on the issue of their status as employees of the Corporation and declared that they are entitled to be treated at par with regular employees of the Corporation for the purpose of payment of salary. By undertaking this exercise, the Labour Court exceeded the jurisdiction vested in it under Section 33-C(2) of the Act. Therefore, the order under challenge is liable to be set aside.

In the result, the writ petition is allowed. The order of the Labour Court is set aside. However, liberty is given to respondent Nos.1 to 12 to seek adjudication of their substantive rights by availing appropriate legal remedy.

G.S.SINGHVI, C.J.

4th April, 2007

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[1] (1997) 9 SCC 377
[2] (2001) 7 SCC 1
[3] (2006) 3 SCC 674
[4] (2001) 1 SCC 73
[5] (2006) 10 SCC 211
[6] AIR 1964 SC 743
[7] AIR 1964 SC 752
[8] AIR 1968 SC 218
[9] (1974) 4 SCC 696
[10] (1995) 1 SCC 235